

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

DANYELL DEARCO COOK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

No. 1:23-cv-01159-JDB-jay
Re: 1:22-cr-10036-JDB-1

ORDER GRANTING MOTION TO DISMISS THE PETITION,
DISMISSING THE PETITION WITHOUT PREJUDICE,
DENYING MOTION FOR COUNSEL AS MOOT,
DENYING CERTIFICATE OF APPEALABILITY,
AND
DENYING LEAVE TO APPEAL IN FORMA PAUPERIS

The Petitioner, Danyell Dearco Cook, has filed a pro se motion to vacate, set aside, or correct his sentence (the “Petition”) pursuant to 28 U.S.C. § 2255. (Docket Entry (“D.E.”) 1.) He has also submitted a motion for appointment of counsel. (D.E. 5.) On August 7, 2023, the Respondent, United States of America, filed a motion to dismiss the Petition without prejudice. (D.E. 4.) The Government points out that Cook’s direct appeal in his underlying criminal case, *United States v. Cook*, No. 1:22-cr-10036-JDB-1 (W.D. Tenn.), is still pending before the Sixth Circuit. (*See United States v. Cook*, No. 23-5434 (6th Cir.).) Petitioner did not respond to the motion to dismiss.

Because Petitioner’s direct appeal has not yet concluded and neither the Petition nor the motion for counsel suggest that extraordinary circumstances exist to warrant early relief, the motion to dismiss is GRANTED. *See Capaldi v. Pontesso*, 135 F.3d 1122, 1124 (6th Cir. 1998) (“[I]n the absence of extraordinary circumstances, a district court is precluded from considering a

§ 2255 application for relief during the pendency of the applicant's direct appeal.”). The Petition is hereby DISMISSED without prejudice and the motion for counsel is DENIED as moot.

Reasonable jurists would not debate the correctness of the Court’s decision to dismiss the Petition. A certificate of appealability and leave to appeal in forma pauperis are therefore DENIED. *See* 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22(b)(1); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003).

IT IS SO ORDERED this 20th day of September 2023.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE